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July 20 2003

15-AFA  
Appeal 3644  
Brief (3)  
Cofa  
8-19-03

RE: Application No. 09/875,553

**Appeals Brief**

Dear Sir,

Attached you will find an appeals brief in response to an office action with final rejection of the above referenced patent application. Enclosed you will find my check for \$160.00 as the fee for filing an appeals brief. Under separate cover I will also send:

- (1) A notice of appeal
- (2) A request for an oral hearing

Thank you in advance for your consideration of this matter.

Respectfully,

  
Norbert P. Sonnek

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## APPEALS BRIEF

Application N . 09/875,553

Title: Plastic Wood Duck House with Wetlands Pole  
Norbert P. Sonnek, Inventor

1.192 (c)(1) Real party in interest – Norbert P. Sonnek  
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1.192(c)(2) Related appeals and interferences – none

1.192(c)(3) Status of claims

- Claim 1 – Amended then rejected
- Claim 2 – withdrawn
- Claim 3 – withdrawn
- Claim 4 – Rejected
- Claim 5 – Rejected

1.192(c)(4) Status of amendments –

- 1) Summary was amended and accepted
- 2) Background – Description of Prior Art was amended and rejected

1.192(c)(5) Summary of Invention -

The present invention is a wood duck nesting house consisting of a round, white plastic deep-cavity container with lid, a white plastic pole and a white plastic pole holder. All four items are made of PVC plastic. The purpose of the nesting house is for use by migratory waterfowl, especially wood ducks. The wood ducks winter in warm climates and migrate north once per year to lay their eggs. The wood ducks normal habitat for laying eggs is in an old growth hollowed out tree trunk. The natural habitat of old growth tree trunks has been diminished which, in turn, almost made the wood duck an endangered species. The present invention simulates a hollowed out tree trunk and provides a suitable site for wood ducks to lay their eggs. The incubation period for the wood duck eggs is about 32 days with the mother duck sitting atop the eggs most of that time. One day after the ducklings hatch from their eggs, the mother duck calls to them to leave the nesting house. The ducklings climb the ladder inside the nesting house, egress through the hole and jump to the ground to join their mother. The mother duck then guides the ducklings to water, food and shelter.

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**Title: Plastic Wood Duck House with Wetlands Pole**

**Norbert P. Sonnek, Inventor**

Prior duck nesting houses have failed for several reasons:

- 1) predators attacked and ate the eggs in the nest
- 2) predators attacked the ducklings as they made their way over land to the mother duck
- 3) the temperature inside the nesting house became too hot and cooked the eggs
- 4) the nesting houses deteriorated due to weather, were too expensive to repair or replace, were too much trouble to care for by duck enthusiasts and so were abandoned

Since the present invention solves all those problems, it has been enthusiastically received and endorsed by:

- Ducks Unlimited, Inc.
- Minnesota Waterfowl Association
- Wood Duck Society

**1.192(c)(6) Issues -**

- 1) Claims 1, 4 and 5 have been rejected as being indefinite, awkward and confusing.
- 2) Claims 4 and 5 are rejected as being unpatentable over Wade (US 3,643,631), in view of Bennett (US 5,740,762) and further in view of Sonnek (US 6,405,679).

**1.192(c)(7) Grouping of Claims -**

It was agreed in a response, dated August of 2002, to an office action summary that inventions 1 and 2 are related and are to be used together. It was further agreed that inventions 1 and 3 are related and are to be used together. It was further agreed that inventions 2 and 3 are not dependent on one another for use. It was further agreed that invention 1 must use invention 2 or invention 3 to establish height and operate as intended.

**1.192(c)(8) Argument -**

- 1) Since I am unable to afford the services and advice of a patent attorney, I would welcome any assistance in the writing of claims. If a claim is indefinite, awkward or confusing, I request your advice to write a claim that is clear and understandable.
- 2a) I respectfully disagree that the present invention is unpatentable over Wade. The Wade metal birdhouse is designed with a double wall to insulate and achieve interior temperature control. The present invention is not metal and does not require a double wall to achieve proper interior temperature control. The present invention uses PVC plastic of a particular thickness and color to achieve proper temperature control. The thickness of the plastic in the present invention does not absorb the cool temperatures, as does the Wade metal container, thereby better insulating the interior of the wood duck house. The white color of the plastic does not absorb heat, as does metal, and keeps the interior of the nesting house cool during warm days so as not to cook the eggs prior to hatching. An official of the Wood Duck Society monitored the temperature and activity inside the nesting compartment of the present invention

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throughout a nesting cycle. He found the temperature range to be most conducive to produce the highest count of hatched eggs. Wade also discloses a screen or mesh ladderlike arrangement along which birds can climb out of the nest. The present invention has a plastic mesh grid designed particularly with grid openings of the size to fit the webbed feet of wood ducks. The mesh grid in the present invention is made of plastic, which will not rust like metal.

2b) I respectfully disagree that the present invention is unpatentable over Bennett. The round Bennett bird house can be converted to a bird feeder. The Bennett bird house has multiple compartments and is intended for use by purple martins which prefer to live in colonies. The object of the Bennett invention is to have a bird house and bird feeder that can be easily assembled and disassembled. The present invention is made solely as a nesting house for wood ducks and other migratory waterfowl and requires no assembly. The object of the present invention is to safeguard the wood duck, the eggs and the hatched ducklings from the elements and from predators. The primary predators are squirrels and raccoons that raid nests and eat the eggs. The present invention was designed with a smooth round surface, devoid of any angles or edges, so that predators have nothing to grab onto for leverage and cannot gain access to the nesting compartment. The present invention was designed with a sufficient diameter, greater than the reach of a raccoon, to make it impossible for raccoons to hug the nesting house and gain advantage. The ingress hole was designed of sufficient height from the bottom of the nesting house to be of greater distance than the grasping reach of a raccoon.

2c) I respectfully disagree that the present invention is unpatentable over Sonnek. The Sonnek segmented telescoping pole is to be used with air pressure to raise and lower a purple martin bird house. The pole of the present invention is distinguished from the Sonnek pole as it is a single segment hollow tube, sealed at each end. The object of the present invention is to deter predators. The inside chamber is water tight so that it can be installed in a pond or wetland. Ponds freeze over during the winter months in Minnesota and other northern states. The pole of the present invention was designed so that water cannot leak into the inner chamber, then freeze, expand and crack the plastic, making the pole unusable. The pole of the present invention, with the wood duck house attached, is planted in a frozen pond or wetland during the winter months in preparation for the arrival of the migrating wood ducks between January and July. The normal installation is to walk out on a frozen pond, create a hole through the ice and plant the pole in the mud below the ice. The advantage in planting a wood duck house in a pond is that squirrels and raccoons will not venture into the water to raid the nest. An additional predator safeguard of the wetland pole is that the new, one day old hatched ducklings can jump from the nesting house, land safely in the water below and swim to the mother duck without being accosted by predators. Using the present invention over water makes it totally predator proof.

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2d) A second pole option is to install the same pole on a shoreline area by using a second segment as a holder. The second segment is a hollow tube of slightly larger diameter with one end sealed. The sealed end is planted in the ground no more than 30 to 100 feet from water. The first segment is placed inside the shoreline planted segment to insure stability against wind. Planting a wood duck house atop a pole on land normally creates greater risk from predators. However, the present invention was designed to deter predators. It is suggested that the pole be planted 15 feet away from trees so that squirrels cannot leap from tree branches and land on the top of the wood duck house. Videotapes, made by an official from the Wood Duck Society, of squirrels trying to access the wood duck house by leaping from tree branches, showed squirrels continually falling to the ground without reaching the wood duck house. The pole of the present invention was designed with a large diameter to make it difficult for squirrels and raccoons to hug the pole and climb at the same time. The smooth, round plastic surface of the pole, made the surface too slippery for predators to grasp and climb. Videotapes made by the Wood Duck Society show two raccoons attempting to climb the pole without success. The videotape then shows one raccoon climbing on the shoulders of the second raccoon for height advantage but still found the pole to be impossible to climb. An official from the Minnesota Waterfowl Association has tested the present invention for the past two years. Even his domestic cats tried to climb the pole but could not reach the nesting house as the pole surface was too slippery and there was nothing to grasp for leverage. The pole of the present invention was designed to deter predators and it has been shown to be successful. This distinguishes it from all other poles.

**1.192(c)(9) Appendix - none**